

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, THE STATES OF CALIFORNIA, DELAWARE, FLORIDA, GEORGIA, HAWAII, ILLINOIS, INDIANA, LOUISIANA, MASSACHUSETTS, MICHIGAN, MONTANA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, OKLAHOMA, RHODE ISLAND, TENNESSEE, TEXAS, VIRGINIA, WISCONSIN and the DISTRICT OF COLUMBIA, ex rel. DAVID MORGAN,

Plaintiffs,

v.

EXPRESS SCRIPTS, INC.; CVS CAREMARK CORPORATION; MEDCO HEALTH SOLUTIONS INC.; FIRST DATABANK, INC.; WOLTERS KLUWER HEALTH d/b/a MEDI-SPAN; MCKESSON CORPORATION; CARDINAL HEALTH, INC.; AMERISOURCE CORPORATION; and JOHN DOE CORPORATIONS 1-20,

Defendants.

Civil No. 05-CV-1714 (DMC)

Hon. Dennis M. Cavanaugh

NOTICE OF DISMISSAL BY THE STATES OF CALIFORNIA, DELAWARE, FLORIDA, GEORGIA, ILLINOIS, INDIANA, MICHIGAN, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, TENNESSEE, TEXAS and the DISTRICT OF COLUMBIA

Pursuant to Fed. R. Civ. P. 41(a), the State of California, for itself and on behalf of the States of Delaware, Florida, Georgia, Illinois, Indiana, Michigan, Nevada, New Hampshire, New Jersey, New Mexico, New York, Tennessee, Texas and the District of Columbia (collectively, the “Fifteen Intervening States”), having intervened for the purposes of settlement and dismissal in part of this action with respect to certain claims against defendant McKesson Corporation

(McKesson”), hereby requests dismissal of the part of this action in which the Fifteen Intervening States have intervened (the “Fifteen Intervening States’ Claims”), as set forth below.

The Fifteen Intervening States’ Claims cover the following alleged conduct by McKesson:

During the period from August 1, 2001 through March 31, 2005, McKesson knowingly increased, to 25% over Wholesale Acquisition Cost (“WAC”) or over Direct Price (“DP”), the markups it reported to First DataBank (“FDB”) for all brand-name, self-administered, prescription pharmaceuticals, without regard to the lower markups suggested by drug manufacturers for such drugs, and knowingly reported such 25% markups to FDB, when in fact (1) prices with such markups did not accurately reflect the prices that McKesson actually charged its customers for such drugs; (2) McKesson knew that reporting such false and inflated markups to FDB would cause FDB to publish false and inflated Average Wholesale Prices (“AWPs”) for such drugs; (3) McKesson knew that FDB described its published AWP as being the product of wholesaler surveys and as reflecting actual prices that wholesalers charged their customers; and (4) McKesson knew that the State would and did use those published AWP to reimburse providers for such drugs. The drugs covered by this Agreement (the “Covered Drugs”) are all brand name, self-administered, prescription pharmaceuticals for which FDB published AWP equal to 25% over the drugs’ respective WACs or DPs. The State further contends that McKesson’s conduct caused the State, which relied on FDB’s AWP or the AWP published by Medi-Span which were derived from FDB’s AWP, to pay artificially inflated reimbursements for the Covered Drugs for Medicaid claims submitted during the period from August 1, 2001, through December 31, 2009.

In accordance with, and subject to the terms of, the settlement agreement (the “Settlement Agreement”) between the Fifteen Intervening States and McKesson and dated on or about July 26, 2012, the State of California requests, on behalf of the Fifteen Intervening States, that any and all monetary claims asserted in this action on behalf of the Fifteen Intervening States by relator against McKesson for engaging in the conduct covered by the Fifteen Intervening States’ Claims, as set forth above, be dismissed with prejudice.

Except for the Fifteen Intervening States’ Claims, no other claims are dismissed pursuant to this Notice. None of the Defendants has filed an answer or a responsive pleading to the Complaint or Amended Complaints.

The undersigned counsel for the State of California has conferred with and obtained the consent of each of the Fifteen Intervening States to file this Notice of Dismissal on behalf of each.

A proposed order accompanies this Notice of Dismissal.

Dated: March 19, 2013

Respectfully submitted,

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Attorney General of California

/s/
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admitted *pro hac vice*

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behalf of the States of California, Delaware,
Florida, Georgia, Illinois, Indiana,
Michigan, Nevada, New Hampshire, New
Jersey, New Mexico, New York, Tennessee,
Texas and the District of Columbia*